92-1772

Supreme Court, U.S.
FILED
AUG 13 1993
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No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1992

BROUGHTON LUMBER CO.,

Petitioner,

v.

COLUMBIA RIVER GORGE COMMISSION, et al.,

Respondents.

SUPPLEMENTAL APPENDIX TO RESPONDENTS BRIEF IN PETITION FOR WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

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August 1993

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SUPPLEMENTAL APPENDIX INDEX

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1.	First Amended Complaint . . . . . May 19, 1989	Supp. A 1-10

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

BROUGHTON LUMBER CO., a Washington corporation,	)	
Plaintiff,	)	Civil No. 89-234-JU
v.	)	FIRST AMENDED COMPLAINT
COLUMBIA RIVER GORGE COMMISSION, THE STATE OF OREGON, THE STATE OF WASHINGTON, and CLAYTON K. YEUTTER, the Secretary of Agriculture of the United States, United States, and the UNITED STATES OF AMERICA,	)	(Columbia River Gorge National Scenic Area Act; Inverse Condemnation
Defendants.	)	(Demand for Jury Trial)

I. INTRODUCTION

1. In this action, plaintiff challenges the refusal of the Columbia River Gorge Commission to allow the division of certain property owned by plaintiff in the Columbia River Gorge National Scenic Area for residential development. Plaintiff seeks a declaratory judgment that the Gorge Commission's refusal to allow the property is unlawful. Alternatively, in the event this Court were to conclude that the Gorge Commission properly exercised its regulatory authority, the Gorge Commission's action has resulted in a taking of plaintiff's property without just compensation. Plaintiff seeks damages of $250,000 plus interest, costs and attorney's fees for the uncompensated taking.

II. JURISDICTION AND VENUE

2. Plaintiff's federal claims arise under the Columbia River Gorge National Scenic Area Act; 16 U.S.C. § 544, and the Fifth Amendment to the United States Constitution. This Court has jurisdiction over plaintiff's federal claims under 28 U.S.C. § 1331, 2201 and 2202. This Court has pendent jurisdiction over

plaintiff's state claims, which arise under the Constitution of Oregon and Washington.

3. Venue is proper in this district pursuant to 28 § 1391(e)(1) as well as 28 U.S.C. §1391(b) and (e)(2).

II. PARTIES

4. Plaintiff Broughton Lumber Co. is a Washington corporation and owner of property within the Columbia River Gorge National Scenic Area (Scenic Area). The property involved in this action is located on the bluff on the Washington side of the Columbia River near White Salmon, Washington.

5. The Columbia River Gorge Commission was established pursuant to a bi-state compact between the states of Oregon and Washington, which was consented to by Congress in the Columbia River Gorge National Scenic Area Act (Gorge Act). The Commission is a political subdivision of the states of Oregon and Washington.

6. The states of Oregon and Washington are parties to the bi-state compact creating the Columbia River Gorge

Commission and each state jointly funds the Commission's activities.

7. Defendant Clayton K. Yeutter is the Secretary of the United States Department of Agriculture and the federal official responsible for the implementation of the Gorge Act. In June of 1987, the Secretary adopted interim land use guidelines which govern private land within the Scenic Area. The Gorge Commission applies the Gorge Act and the Secretary's interim guidelines in examining land use applications which come before the Commission.

8. At all relevant times, the Gorge Commission, the states of Oregon and Washington, the Secretary of Agriculture and the United States were engaged in a joint undertaking to regulate the use and development of property in the Scenic Area.

IV. FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

9. In August, 1988, plaintiff submitted a land use application to the Commission to subdivide certain bluff property

in the Scenic Area into three parcels. On October 25, 1988, the Executive Director of the Commission denied plaintiff's request. Plaintiff appealed this decision to the Commission. Following a hearing on January 10, 1989, the Commission denied the appeal in a final order dated January 24, 1989.

10. The Commission erred in denying plaintiff's application in one or more of the following particulars:

a. in erroneously interpreting and applying the Standards in the Gorge Act and the regulations promulgated thereunder;

b. in issuing an order no supported by substantial evidence; and

c. by considering evidence not in the record.

11. The Commission's action adversely affects plaintiff and is contrary to law. Pursuant to 16 U.S.C. § 544m(b)(4), a declaratory judgment should issue setting aside and terminating the Commission's action as invalid.

V. SECOND CLAIM FOR RELIEF

(Inverse Condemnation Against the Gorge Commission and the States of Oregon and Washington)

12. The denial of plaintiff's application has effected a taking by the defendant Commission and defendants Oregon and Washington of plaintiff's property.

13. The taking was of private property for a public use.

14. No compensation has been offered or received for the taking.

15. Defendants Oregon, Washington and the Commission violated the Fifth Amendment of the United States Constitution as applied to the states through the 14th Amendment by effecting a taking of plaintiff's property without just compensation.

16. Defendants Washington and the Commission violated Article I, Section 16 of the Washington Constitution by their action.

17. Defendants Oregon and the Commission violated Article I, Section 18 of the Oregon Constitution by their action.

18. Washington, Oregon and the Commission are liable to plaintiff for $250,000 in just compensation for their taking.

19. Defendants Washington and the Commission are liable to plaintiff for its costs and reasonable attorneys fees under RCW 8.25.070.

20. Defendants Oregon and the Commission are liable to plaintiff for its costs and reasonable attorneys fees under ORS 20.085.

VI. THIRD CLAIM FOR RELIEF

(Declaratory Judgment Action Against the Secretary and the United States)

21. The standards in the Gorge Act and the implementing regulations promulgated by the Secretary required the Commission to effect a taking of plaintiff's property without just compensation.

22. Plaintiff is entitled to a declaration that the United States and the Secretary have thereby effected an unconstitutional taking of plaintiff's property.

23. Defendants United States and Secretary of Agriculture are liable to plaintiff for its costs and reasonable attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and for interest from the date of taking pursuant to the Declaration of Taking Act, 40 U.S.C. § 258a.

VII. FOURTH CLAIM FOR RELIEF

(Inverse Condemnation Against the Secretary and the United States)

24. Plaintiff realleges paragraphs 21 and 23.

25. As a result of the unconstitutional taking of plaintiff's property, defendants United States and Secretary of Agriculture owe plaintiff just compensation in the amount of $250,000.

WHEREOF, plaintiff prays for relief as follows:

1. On its first claim for relief, for a declaratory judgment that the Commission erred in denying plaintiff's application;

2. On its second claim for relief, for judgment against the Commission, Washington and Oregon for $250,000 in compensation owed for the taking, along with its reasonable costs and attorneys fees;

3. On its third claim for relief, a declaratory judgment that the Secretary and the United States effected an unconstitutional taking without just compensation through the Gorge Act's standards and implementing regulations.

4. On its fourth claim for relief, for judgement against the United States and the Secretary of Agriculture for $250,000 in compensation owed for the taking, along with its costs and reasonable attorney's fees.

5. For such other relief as may be just and proper.

DATED this 19th day of May, 1989.

HAGLUND & KIRTLEY

By

Michael E. Haglund
Attorneys for Plaintiff